IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 312 of 1993

For Approval and Signature:

Hon'ble MR.JUSTICE K.A.PUJ

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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ANILKUMAR P JAIN

Versus

STATE OF GUJARAT

Appearance:

MR JAYANT P BHATT for Petitioner No. 1

Mr. B.Y. Mankad, AGP for Respondent No. 1-1/B

RULE SERVED for Respondent No. 2-3

CORAM : MR.JUSTICE K.A.PUJ

Date of decision: 19/04/2002

ORAL JUDGEMENT

This petition is filed under Article 226 of the Constitution of India seeking mandatory directions directing the respondents to transfer Plot No. 230 in Sector No. 28, Gandhinagar to the petitioner by accepting from him the balance amount of the purchase price with interest at 20% from due date till payment and to deliver vacant possession of the said plot to the petitioner. The petitioner has also prayed for interim relief

restraining the respondents from dealing with or disposing of or reauctioning the said plot and/or to change the status in respect of the said plot in any manner whatsoever. This Court, while admitting the petition on 2-4-1994, had passed the order of status-quo as on that day to be maintained.

2. The brief facts, giving rise to the present petition, are that in Sector 28, Gandhinagar, a plot of land bearing No. 230, admeasuring about 326.22 sq.mtrs., was put up for auction on 24.1.1985 by respondent No.3 and the upset price for the said auction was fixed at Rs. 300/= per sq.mtr. The petitioner was the highest bidder at the said auction and he offered his bid for Rs. 625/= per sq.mtr. The said bid of the petitioner was accepted by the 3rd respondent and the same was confirmed in favour of the petitioner on the terms and conditions mentioned in the order passed by the 2nd respondent on 2.11.1985.

3. The petitioner had submitted that he had paid an amount of Rs. 51,100/= being 25% of the amount of purchase price on 25.1.1985 and the petitioner was required to deposit the balance amount of the purchase price within 3 months from 1.2.1986 as stated in the order dated 2.11.1985. However, the petitioner had received the said order on 17.1.1986 and hence the petitioner had asked for time for making the balance payment within three months from 17.1.1986 and not from 2.11.1985. The petitioner had not received any reply to the said application. However, a show cause notice was received by the petitioner on 24/27.6.1986 asking the petitioner to show cause as to why the 25% of the purchase price should not be forfeited since the payment of the balance amount was not made by the petitioner on or before 16.4.1986. The petitioner had further submitted that he had given reply on 14.7.86 to the said show cause notice and as stated in the said reply the petitioner paid further amount of Rs. 50,000/= on 28.7.86. However, the demand draft was returned by the 2nd respondent to the petitioner on the ground that auction sale in favour of the petitioner was cancelled. The 2nd respondent had passed an order in this regard on 29.7.1986.

4. The petitioner had further submitted that being aggrieved by the said order dated 29.7.1986, a revision application was filed by the petitioner before the Special Secretary (Appeals), State of Gujarat raising several grounds. However, the said revision application was rejected by the appellate authority on 12th January

1987.

5. The petitioner had further submitted that despite rejection of his appeal, the said plot of land was not put to resale and hence the petitioner gave another application on 22.3.1988 and sent therewith a cheque of Rs. 1,52,787.50 ps. being full balance amount of the purchase price of the said plot. However, the 2nd respondent had not accepted the said cheque and returned it to the petitioner along with a letter dated 4.4.1988. The petitioner therefore wrote another letter dated 11.4.1988 pointing out a similar case in which delay in payment of purchase price has not been taken as a ground for cancelling the purchase of the plot at the auction. On the basis of the discriminatory treatment given to the petitioner by the respondents and being aggrieved and dissatisfied with it, the petitioner filed Special Civil Application No. 4891 of 1987 before this Court wherein a specific ground was raised by the petitioner that delay in payment of the balance amount for purchase price was condoned by the Government in many cases by charging interest at the rate of 20% p.a. The petitioner had further submitted that he had already made a representation on 11.4.1988 before the State Government but the said representation was not considered.

6. The petitioner has further submitted that the said Special Civil Application No. 4891 of 1987 came to be heard and disposed of by this Court (Coram: M.B. Shah, J.) on 19.12.1988 giving following direction to the respondents :

> ".....Taking into consideration the aforesaid facts and circumstances, the Government is directed to sympathetically consider the petitioner's representation for condoning the delay in making payment of balance amount of the purchase price by charging 20 percent interest."

7. The petitioner further submitted that pursuant to the aforesaid order passed by this Court on 19.12.1988, the petitioner moved a representation before the 2nd and 3rd respondent on 11.1.1989. However, the said representation was not decided till 23.3.1992 and hence the petitioner had moved before the Secretary, Roads and Buildings Department, Sachivalaya, Gandhinagar, raising his grievance against the inaction on the part of the respondents No.2 & 3 with regard to his representation dated 11.1.1989. In response to the said letter, the

petitioner received a reply dated 1.5.1992 from Secretary, Roads & Buildings Department, Gandhinagar, informing the petitioner that according to law the petitioner could not be allotted the said plot. Since the petitioner's grievance was not redressed by the Secretary, Roads & Buildings Department, the petitioner wrote another letter dated 30.11.1992 pointing out to the Secretary, Roads & Buildings Department, Gandhinagar, that in case of one Mr. Jagdishbhai Laljibhai Thakkar had given a bid in respect of Plot No. 235 in Sector 28 and he could not make the payment of balance amount of the purchase price within the stipulated period and despite this fact the said Mr. Thakkar was allotted the plot by accepting the amount subsequently. In response to the said letter dated 30.11.1992, the petitioner received a reply from the Secretary, Roads & Buildings Department on 4-1-1993 stating that according to law the petitioner should not be allotted plot in question.

8. Being aggrieved by this decision, the petitioner filed the present petition before this Court.

9. At the time of hearing of this petition, Mr. J.P. Bhatt, the learned advocate appearing for the petitioner has made strenuous efforts to convince this Court that the petitioner's case is similar to the case of said Shri J.L. Thakkar and yet the petitioner was not allotted the plot in question whereas the said Shri J.L. Thakkar has been allotted the plot. A comparative statement of petitioner's case as well as case of Mr. J.L. Thakkar was filed by Shri Bhatt and from the perusal of the said statement, it appears that there is much similarity in both the cases. As far as the petitioner's case is concerned, the petitioner was the highest bidder and he has offered a price of Rs. 625/= per sq.mtr. for the plot No. 230 in Sector 28, Gandhinagar in public auction held on 24.1.1985. The said auction was approved by the Collector, vide his order dated 2.11.1985. The petitioner was given show cause notice dated 27.6.1986 by the Collector as he could not make the payment of 3/4th of the purchase price within the stipulated time limit. The petitioner had thereafter asked for extension of time for payment of remaining amount as there was unrest in the city. The petitioner had sent a demand draft of Rs. 50,000/- which was returned by the Collector on 30.7.1986 and the Collector had cancelled the auction and forfeited the deposit amount of Rs. 51,100/= vide his order dated 29.7.1986. As against these facts of the petitioner, in the case of Shri J.L. Thakkar, he was the highest bidder offering Rs. 523.75 per sq.mtr. for plot No. 235 of

Sector 28 in Gandhinagar in public auction held on 29.1.85. The said auction was approved by the Collector vide his order dated 31.5.1985. The said Shri Thakkar was also given show cause notice on 13.5.86 as he could not make 3/4th payment within the stipulated time limit. The said Shri Thakkar had also asked for extension of time vide his letter dated 13.7.86. The Collector had granted extension of time after due persuasion and condoned the delay of one year and 17 days in payment of remaining amount by charging 20% interest on the balance amount. On the basis of this comparative statement, it was argued by Mr. Bhatt, the ld. advocate for the petitioner that there was no reason for the respondent authorities to give different treatment to the petitioner especially when facts were identical and in most of the cases, the respondent authorities have condoned the delay after charging interest on late payment of the balance amount. Mr. Bhatt, the ld. advocate for the petitioner has further submitted that even after specific direction given by this Court to consider the petitioner's representation sympathetically for condoning the delay in making payment of the balance amount of purchase price by charging 20% interest, the respondent authorities have not considered this aspect of the matter and straightway passed the rejection order. Mr. Bhatt, the ld. advocate for the petitioner has further submitted that because of the order of status-quo passed by this Court, the plot in question is not put to auction for resale and it is lying vacant. In view of this matter, a prayer is made that appropriate order should be passed by this Court directing the respondent authorities to allot the said plot to the petitioner by charging interest at 20% for the period commencing from 2.2.1986, the due date for making the balance payment till 18.1.1993, the date on which the present petition was filed before this Court.

10. Mr. Mankad, the learned A.G.P. has appeared for the respondent authorities and submitted that the price of the plot in 1985 was fixed at Rs. 625/=, whereas as on today the price of the said plot is much exhorbitant. He has further submitted that the said plot cannot be allotted to the petitioner at Rs. 625/= and the plot should be ordered to be reauctioned so as to fetch the prevalent market price for the said plot.

11. I have considered the arguments of both the parties and I have also gone through the pleadings as well as the relevant documents filed in the proceedings. I am of the view that looking to the facts of the present case, and comparing the facts of the other persons similarly situated, more particularly the case of Shri

J.L. Thakkar, a discriminatory treatment was given to the petitioner and any decision based on such discrimination cannot be sustained. It is, therefore, in my considered opinion that ends of justice would be met if the respondent authorities are directed to allot the said plot to the petitioner at the rate of Rs. 625/= per sq.metre by charging interest at 20% on the balance amount of Rs. 1,52,787.50 ps., for the period from 2.2.1986 to 19.1.1993 and from 19.1.1993 till date of payment at 10% on the said amount of Rs. 1,52,787.50 ps. It is made clear that the petitioner has to make the said payment along with the interest as calculated on the above basis, within two months from the date of this order and, in any case, not later than 30.6.2002. On receipt of such payment from the petitioner, the respondent authorities are directed to hand over the vacant possession of the Plot No. 230 of Sector 28 in Gandhinagar and the respondent authorities are further directed to execute all necessary documents in favour of the petitioner within one month from the date of receipt of the said payment from the petitioner.

12. With the above directions, the petition is disposed of accordingly. Rule is made absolute to the above extent with no order as to costs.

rmr. [K.A. Puj, J.]